Road Relocation through High-Value Caribou Habitat near Tsus Creek, East of Prince George

Special Investigation Report

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The Investigation

Introduction

On November 20, 1998, the district manager of the Prince George Forest District approved the 1998-2002 forest development plan (FDP) for Carrier Lumber Ltd. (the licensee). The approval letter also indicated that a changed road location, proposed as a minor amendment to the 1997 FDP, was approved. Consequently the plan approved in 1998 reflected this change. The minor amendment proposed changing the location of a road to an approved cutblock. Originally, the road was to reach the cutblock from the north. The previously approved northern road location was adjacent to a tributary of Tsus Creek. The northern road location would have gone through an area with relatively low value caribou habitat but with potential terrain stability problems. The amendment would create a road from the south, through an area that has stable terrain, but is important caribou habitat.

In February 1999 the Board decided to investigate the circumstances associated with the approval of the amendment under section 43 of the *Forest Practices Code of British Columbia Act* (the Act). The Board considered that the district manager's approval of the amendment had public significance because it involved balancing and managing risks to several resources – soil, fish, recreation and wildlife.

In this special investigation the Board examined the following:

Did the approval of an amendment to the 1997 approved FDP meet the requirements for minor amendments under the *Forest Practices Code of British Columbia Act* and related regulations (the Code)?

Can the district manager revisit the approval of a cutblock approved in a previous development plan?

Can the district manager consider new information after making his decision?

Background

The licensee's 1998-2002 FDP was made available for review and comment from mid-February to the end of April 1998. The development plan indicated that access to one block, cutblock 209, would come from the north. The 1997 FDP had previously been approved with this route. There was no mention in the 1998-2002 FDP of any alternative routes.

On March 24, 1998, during the public review of the 1998-2002 FDP, the Ministry of Forests (MOF) approved Amendment #8 to the licensee's 1997 FDP. The amendment varied the road location for access to several blocks including cutblock 209. The amendment reduced the amount of roads by approximately 45 percent. The original 1997 FDP had one road on each side of Tsus Creek. The amendment eliminated one of those roads but required two bridges to be built. One bridge would span Tsus Creek, and another would span a tributary of Tsus Creek. The bridge over the tributary of Tsus Creek would provide access to cutblock 209 from the north. Ministry of Environment, Lands and Parks (MELP) staff noted concerns with the bridge

over the tributary. The tributary does not contain fish, but it flows into Tsus Creek, which is an important fish stream. MELP cautioned the MOF that sediment introduced into the tributary could flow downstream into Tsus Creek, affecting excellent fish habitat. MOF approved the amendment under section 43 of the Act. Section 43 of the Act allows a district manager to approve an amendment to a development plan without public review and comment if the district manager determines that the amendment is minor in nature. As of March 24, 1998, the amended northern access route into cutblock 209 was approved.

On August 30, 1998, the licensee asked the MOF district manager for a further amendment to their 1997 FDP. The licensee considered soil stability concerns with the approved northern route to be an unacceptable risk. The junction of the main road along Tsus Creek and the northern route to cutblock 209 would be difficult to stabilize. The junction is located on a 60 percent slope with coarse textured material. The amendment proposed a completely different road to the block coming from the south instead of the north. At that same time, the licensee informed regulatory agencies that some 30 percent of cutblock 209 encroached into a "caribou high zone,". MELP ranks caribou habitat based on suitability for caribou and assigns management guidelines for those areas. The district manager noted that because cutblock 209 was in the caribou high zone, the previous 1997 FDP had been approved in error. However, the district manager stated he could not revisit the previous approval of this block. The district manager went on to consider the alternative southern route amendment.

The amended northern route accessed the block from the Tsus Creek valley. The northern route crossed steep coarse textured slopes and was outside the mapped caribou high zone. The August 30, 1998 amendment proposing the southern route would create access from an adjacent valley (Pitoney Creek). The proposed southern route went through about two kilometres of medium and high caribou habitat.

On October 20, 1998, the district manager held a meeting to discuss the southern route proposed in the amendment with his staff, MELP staff and the licensee. On October 22, 1998, the district manager decided to approve the amendment. He emailed his decision, with reasons, to both MOF and MELP staff. The district manager also recorded his analysis of the risks and his rationale for the decision in a November 10, 1998 memorandum entitled Assessing and Managing Risk. On November 20, 1998, the district manager formally notified the licensee that he had approved the 1998 development plan. The approval letter also indicated that the southern route, proposed in the August 30, 1998 amendment to the 1997 FDP, was approved. The district manager approved the southern road location without public review and comment, because he considered it to be a minor amendment.

Investigation Findings

1. Did the approval of an amendment to the 1997 approved FDP meet the requirements for minor amendments under the Code?

On August 30, 1998, the licensee asked the MOF district manager for an amendment to the 1997 FDP. The amendment proposed a southern route to access cutblock 209. However, the approval of the 1998 FDP was imminent. On November 20, 1998, the district manager, in a letter approving the 1998 FDP, also approved the southern route proposed in the amendment to the

1997 FDP. The approval of the 1998 FDP was made under section 41 of the Act. The district manager's approval of the amendment to the 1997 FDP was made under section 43 of the Act. The Board examined the decision to approve the amendment under section 43.

Section 43(1) of the Act allows a district manager to approve an amendment to an FDP without public review and comment if the district manager determines that the amendment is minor in nature and it:

a) otherwise meets the requirements of the Act, the regulations and the standards;

b) will adequately provide for managing and conserving the forest resources of British Columbia for the area to which it applies; and

c) does not materially change the objectives or results of the plan.

1.1 Did the minor amendment meet the Code requirements relevant to caribou?

Section 43(1)(a) requires that the amendment meet the requirements of the Act, regulations and standards. Two sections of the Code are of particular importance to the approval of this amendment. The amendment must incorporate known information and the district manager must determine that the plan meets all requirements of section 43 of the Act.

Forest development plans must incorporate known information and demonstrate how specified resource values will be protected. Known information is defined as information contained in a higher level plan, or otherwise made known by the district manager or designated environmental official at least four months before the operational plan is submitted for approval. The type of information that can be made known is specified in section 18(1)(e) of the *Operational Planning Regulation* (OPR). In this case, the caribou high zones were not in a higher level plan or made known under section 18 of the OPR. There were no specific Code requirements that applied to the amendment in terms of caribou. The minor amendment met the Code requirements for known information.

Finding #1:

In relation to caribou, the district manager complied with section 43(1)(a) of the Code. He decided that the 1997 FDP amendment met the content and information requirements of the Code as they applied to caribou.

1.2 Does the minor amendment adequately provide for managing and conserving forest resources?

In assessing the adequacy of management and conservation, the district manager used two analyses. First, he assessed the effect of the southern route on forest resources. Then, he compared the risks of the alternative routes: the northern route and the southern route.

Section 43(1)(b) of the Act requires that a district manager determine that an amendment is minor in nature and will adequately provide for managing and conserving the forest resources for the area to which it applies. The determination involves the use of discretion. The standard

the Board uses in evaluating discretionary decisions is not whether, in the Board's opinion, the decision was the best decision. Rather, the standard is:

> Was the decision consistent with sound forest practices, did it achieve the intent of the Forest Practices Code and was it based on an adequate assessment of available information?

The Board reviews discretionary decisions to determine if they are reasonable, but not whether they are the best or optimal.

1.2.1 Caribou habitat in the FDP area

The licensee's 1997-2002 FDP (approved on November 20, 1997) stated:

> Biodiversity Objectives: In addition, this plan will protect the habitat of species known at risk within the operating areas covered by this plan. More specifically, the habitat of caribou and mule deer have received special considerations and this plan adheres to the both the caribou and mule deer management strategies developed by Ministry of Environment, Lands and Parks.

On August 30, 1998, the licensee submitted the proposed amendment to the district manager. At that time, while the 1998 FDP was being considered for approval, the licensee informed both MOF and MELP that cutblock 209 was located partially in the caribou high zone. The proposed southern road would go through approximately two kilometres of caribou high habitat and a small amount of caribou medium habitat.

At the time, mountain caribou was a "blue-listed" species in British Columbia. Blue-listed species are vulnerable because they are particularly sensitive to human activities or natural events. MELP staff have expertise in caribou management and conservation. They maintained that the amendment would not adequately manage and conserve caribou and caribou habitat and would pose an unacceptable risk to the long-term viability of the herd. A wolf pack used the area, and the proposed southern road could allow wolves to reach the caribou herd in winter.

The 1998 FDP maps showed cutblock 209 as extending into a caribou high zone. Caribou habitat zones (high, medium and corridors) have been subject to forest management guidelines since 1991 in the Prince George Forest District. Commercial timber harvesting has been deferred in high-value caribou habitats throughout the Prince George Forest Region until it can be shown that caribou and timber harvesting can co-exist. The Prince George Forest District provided licensees guidance in creating their FDPs by means of yearly operating procedures. Specifically, the district manager provided the licensee with the operating procedure entitled *Forest Development Plan Guidebook Supplement*. The purpose of the procedure was to give licensees guidance when preparing their forest development plans, clarifying the *Forest Development Plan Guidebook*. In 1997, the supplement stated:

> Wildlife Management: Caribou zone and corridor maps have been published and are available from the district office. MELP requests that caribou corridors, high usage, and moderate usage areas be depicted on your maps. The publication *Mountain Caribou in Managed Forests: Preliminary Recommendations for Managers* (1994) can give guidance on management options.

MELP caribou maps depict three distinct areas: caribou high zones; caribou medium zones; and caribou corridors. The management practices for these zones are described in the January 1995 MOF *Prince George TSA Timber Supply Analysis.* The timber supply analysis is used by the Chief Forester to determine timber harvesting levels. The analysis report states that it assesses the implication of current management practices. The caribou zones were described as follows:

> **Caribou medium habitat zone (zone 7)** – These areas are proposed to be harvested using partial cutting systems. The partial cutting regime is simulated by allowing only half of the volume in these areas to be available for harvest every 80 years.
>
> **Caribou corridors (zone 8)** – to ensure adequate mature forest cover required for caribou migration, a maximum of 20 percent of the area may be in a non green-up condition (less than three metres tall) at any time (a five-pass management system).
>
> **Caribou high habitat (zone 9)** – Over the past few years, the Ministry of Environment, Lands and Parks has declined approval of proposed harvesting in these caribou habitat areas. These areas are currently not available for timber harvesting activities.

The *Mountain Caribou in Managed Forests: Preliminary Recommendations for Managers* report (1994) discusses information regarding forest management in caribou habitat. The report states that timber harvesting should be restricted to lower value habitat. The report also states that, in the lower value stands, uneven-aged silviculture systems (such as single tree selection and group selection systems) are the most suited to achieving and maintaining the stand characteristics needed by caribou over the long term. Lastly, the report states that if even-aged silviculture systems must be used in specific situations, retaining mature, unlogged, windfirm reserve areas is strongly recommended. There was no indication in the proposed 1998 FDP, beyond the maps, that the block extended into the caribou high zone. In fact, the licensee was not aware of the overlap.

On this point, the Board found that the omission was simply an oversight; there was no indication of any intention to mislead anyone who reviewed the plan. The 1998 proposal of the southern route, and 30 percent of the 1997 approved harvesting in cutblock 209, was contrary to the well-established practice of no harvesting in caribou high zones.

In a September 29, 1998 memo to MOF, MELP staff stated that the proposed southern access route through this specific caribou high zone was not acceptable because of the potential harm to caribou. Harvesting (and associated roads) in caribou high zones is contrary to MELP caribou guidelines. Although MELP staff had reviewed block 209 in 1997, they had missed the fact that a portion of the block was within the caribou high zone. Until the summer of 1998, MOF, the licensee and MELP were not aware that block 209 was partially in the caribou high zone. MELP staff asked that MOF reconsider the approval of logging in the areas within the caribou high zone and drop those areas from the development plan.

At the inter-agency/licensee meeting on October 20, 1998, the licensee proposed strategies to mitigate impacts on caribou from the proposed southern route. The licensee proposed to limit access into the caribou habitat by building slash pile vehicle barriers and by building the road in

winter to facilitate quicker deactivation. MELP staff stated that the strategies were inadequate. MELP stated that the barriers would likely not be effective in winter. The primary concern with the amendment was difficulty in controlling predator and snowmobile access to the caribou high zone. MELP maintained that the northern road location could be deactivated effectively. The northern road would have crossed a steep ravine using a bridge. Removal of the bridge would keep snowmobiles out of the area and would reduce the ability of wolves to reach the caribou high area.

1.2.2 The applicable caribou guidelines

The 1997 FDP southern route amendment was prepared in the summer of 1998. The licensee had access to guidance on caribou provided in the June 1998 draft Prince George Land and Resource Management Plan (LRMP). The draft LRMP stated that timber harvesting (and the associated road networks) were believed to be incompatible with long-term maintenance of caribou populations. It also stated that commercial timber harvesting was to be deferred in high value caribou habitat until it was shown that caribou and timber harvesting could co-exist.

Although the LRMP was not yet approved by Cabinet, it did contain caribou management guidelines. The draft LRMP, crafted with public input, had created a public expectation that guidelines within it would be considered in the preparation and approval of a Code operational plan.

The southern road location is within the George Mountain/Wendle Lake special management zone identified in the Prince George draft LRMP. Management in that zone seeks to emphasize the conservation of caribou habitat and other values. Resource development must include measures to conserve these values. The special management zone has an objective and several strategies for caribou management. The objective is to manage habitat to encourage population growth. The caribou strategies include:

- prohibition of commercial timber harvesting in areas of high-suitability caribou habitat until proven management strategies are developed in areas of medium suitability caribou habitat, appropriate to the growth cycle of trees in the caribou habitat;
- implementation of alternate silvicultural systems in areas of medium-suitability caribou habitat;
- maintenance of the integrity of caribou movement corridors;
- in areas of medium-suitability caribou habitat or movement corridors, planning of winter logging to minimize the number of plowed roads; and
- recommendation by MELP of constraints on backcountry recreation activities that are incompatible with caribou conservation.

1.2.3 The district manager's consideration of caribou in his decision

The district manager stated that both the northern and the southern routes provided access to the caribou high zone. His decision to approve the southern road amendment was based on a comparison of the environmental risks associated with each route. The district manager stated that he considered the management objectives and strategies of the June 1998 draft LRMP. The George Mountain/Wendle Lake special management zone objectives allow road building into areas without roads only when access is required for mineral exploration. The district manager

stated that, although the draft LRMP recommended no harvesting in caribou high zones, his opinion was that the draft LRMP did not unequivocally restrict building roads through caribou high areas. In the November 10, 1998, memorandum, he stated:

> Access through part of, and to, caribou high zone may violate public trust as developed from LRMP table. I concluded this to be a perceived risk with a low likelihood of occurrence. Although the LRMP curtailed harvesting operations until proven management strategies were developed there was no explicit curtailment of access to or through these zones (likely in recognition of other resource activities such as mining).

The southern route location was contrary to the direction in the LRMP. The district manager's statement that the LRMP did not specifically restrict road construction in caribou high habitat was inaccurate. Even though incidental timber harvesting for mineral and/or petroleum activities is permitted, incidental harvesting and exploration must be done with sensitivity to other resource values. The George Mountain/Wendle Lake special management zone objectives allow road building into areas without roads only when mineral exploration demonstrates that road access is required. The southern route would require harvesting the road right-of-way, thereby removing about six hectares of caribou high and medium habitat. The LRMP recommended deferral of such harvesting in caribou high zones.

Also, the LRMP assumed that MELP would propose acceptable caribou management practices and constraints on backcountry recreation. With respect to this particular case, MELP maintained that the southern route amendment would not adequately manage and conserve caribou and caribou habitat, and would pose an unacceptable risk to the long-term viability of the herd. A wolf pack used the area, and the road could allow wolves to follow snowmobile tracks and reach the caribou herd in winter. The proposal to limit access into the caribou habitat by building slash pile vehicle barriers was considered inadequate by MELP, as the barriers would likely not be effective in winter, which is when the caribou are most vulnerable. In contrast, MELP staff maintained that the northern road location could be deactivated effectively. The northern road would have crossed a steep ravine using a bridge. Removal of the bridge would keep snowmobiles out of the area and would reduce the ability of wolves to reach the caribou high area.

The district manager accepted the licensee's proposal to build a slash pile barrier and to build the road in winter as adequate to mitigate impacts to caribou. The district manager said there was no evidence that increased access would directly result in more pressure on the herd from snowmobiles, as there was already access from other locations. In his November 10, 1998 memorandum, the district manager indicated he would prohibit snowmobiles from the area if necessary. The district manager concluded that the amendment did not materially affect the objectives of the plan.

The Board considers that the district manager's decision to approve the southern route was inconsistent with sound forest practices. The decision was not based on an adequate assessment of available information given the commitments in the FDP and the caribou management guidelines contained in the draft LRMP. The new route location was contrary to the direction in the draft LRMP and MELP expert advice with respect to caribou management. The district manager did not have sufficient information to indicate that the amendment would manage and

conserve the forest resources. The available information indicated that the FDP would not manage and conserve caribou.

Finding #2:

The district manager did not comply with section 43(1)(b) of the Act when he approved the 1997 FDP amendment because it did not adequately provide for managing and conserving the forest resources. The district manager approved the amendment despite evidence that the proposed road location contained some high-value caribou habitat; did not incorporate the caribou management strategies contained in the Prince George draft LRMP; and, in MELP's professional opinion, increased the risk of extirpation of the caribou herd.

1.2.4 Comparison of alternative routes

Section 43(1)(b) of the Act requires that a district manager determine that an amendment for minor changes to operational plans will adequately provide for managing and conserving the forest resources. In making such an assessment for the amended road location, section 43 does not require a comparison of alternatives. Section 43 also does not state that the decision-maker must either approve the amendment or, by default, affirm the original plan. The amendment proposed a new road location to a previously approved and permitted cutblock. The wording of the Act suggests that a district manager is obliged to consider whether the proposed amendment (the southern route) will adequately manage and conserve the forest resource. The obligation is not whether the amendment manages and conserves forest resources more or less than a previously approved route.

On October 22, 1998, the district manager emailed his decision on the southern route, with reasons, to MOF and MELP staff. The district manager indicated that the amended route to cutting permit (CP) 210 (which included cutblock 209) was the most acceptable of the two routes. The district manager stated:

> I have reviewed the material and information from Carrier, MELP staff and my staff regarding the issue of which route should be approved to access CP 210... I have concluded that the most appropriate route to approve to CP 210 is the southern route, through the caribou medium and high zones." Additionally, the district manager explained his decision in the November 10, 1998, memorandum. The introduction states:
>
> I was faced with <u>having to make a decision between two possible access routes</u> to a cutblock. [emphasis added]

The district manager considered his decision to be a choice between two routes. He considered whether the proposed route amendment would have an impact equal to or less than the original northern route's impact. He concluded that the southern route would have less impact. That is not the proper test for section 43(1)(b). Firstly, the district manager should have evaluated the southern route amendment on its own merits. The proper test was whether the district manager was satisfied that construction of that road in high value caribou habitat would allow adequate management and conservation of caribou habitat values. Had the district manager satisfied

himself that the southern route would adequately manage and conserve forest resources, then he could go on to compare the two routes.

Finding #3:

In approving the amendment, the district manager did not properly exercise his discretion under section 43(1)(b) of the Act. In focusing on a comparison of two routes, the district manager applied the wrong legal test. The district manager chose between two routes. The legal test is not a choice between the original proposal in the FDP and the proposed amendment. The test is to determine that the amendment would adequately manage and conserve the forest resources.

1.3 Did the development plan amendment materially change the objectives of the plan?

Section 43(1)(c) requires that an amendment not materially change the objectives or results of the plan. The district manager concluded that the amendment was minor because it did not materially affect the objectives of the plan. He stated that both routes (northern and southern) provided access to the caribou high zone.

The Board interprets "materially" as meaning "substantially" or "considerably." The Board considered whether the amendment, proposing a new route, materially changed the objectives or results of the plan. In doing so, the Board looked to input provided to the district manager by MELP, because MELP staff have expertise in caribou management and conservation.

The licensee's 1997-2002 FDP (approved on November 20, 1997) stated:

> *Biodiversity Objectives*: In addition, this plan will protect the habitat of species known at risk within the operating areas covered by this plan. More specifically, the habitat of caribou and mule deer have received special considerations and this plan adheres to both the caribou and mule deer management strategies developed by Ministry of Environment, Lands and Parks.

Although the original northern road location did lead up to the caribou high zone, the road did not travel through that zone. Additionally, the northern route crossed a steep ravine using a bridge. MELP staff felt removal of the bridge would keep snowmobilers out of the area and reduce the ability of wolves to reach the caribou high zone.

The proposed southern route travels through both caribou high and medium zones for about two kilometres. MELP staff maintained that the southern route could allow wolves to reach the caribou herd in winter. There would be difficulty in controlling predator and snowmobile access to the caribou high zone. The development plan's stated objective was to "protect the habitat of species known at risk." As well, the plan stated that it adheres to caribou management strategies developed by MELP. MELP reiterated that the management strategy for caribou high zones was no harvesting. The road would result in harvesting in the caribou high zones; therefore, it did not adhere to MELP's management strategies. Given the objections of MELP staff, the development plan's objective of protecting the habitat of species known to be at risk was not likely to be achieved.

The amendment proposed a completely different route to cutblock 209, through a different valley, with different impacts to resources. The northern route had greater impacts to fish and streams, while the southern route had greater impacts to caribou. The amendment was not consistent with the development plan's biodiversity objectives. The objective was to protect species at risk and adhere to caribou management strategies developed by MELP. The amendment changed the objectives and results of the plan. The Board concludes that the proposed amendment was substantially different and should not have been considered minor.

The amendment was substantially different from both the original 1997 and the proposed 1998 FDP that was available for public review and comment. The change is, therefore, materially different. Section 43(1)(c) requires that an amendment "not materially change the objectives or results of the plan."

Finding #4:

The district manager did not comply with section 43(1)(c) of the Act when he approved the 1997 FDP amendment. The amendment materially changed the objectives and results of the plan by moving the road location to an entirely different valley, affecting different resources.

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2. Can the district manager revisit the approval of a cutblock approved in a previous development plan?

The Code provides security and certainty to licensees who have received development approvals for individual roads and blocks. The Code gives protection of cutblocks and roads to ensure that, once approved, a licensee does not have to revisit or modify its planned operations except in rare situations. After a cutblock or road has been included as part of an approved FDP with category "A" status, the district manager generally cannot refuse to approve that road or cutblock in subsequently proposed FDPs.

Sections 21 and 22 of the *Operational Planning Regulation* provide the mechanism for cutblock and road protection. Section 22 provides the security of road and cutblock approvals. It prohibits the district manager from revisiting the approval of a cutblock or road if a cutting permit or road permit has already been issued for that road or cutblock.

Section 21 gives a district manager limited authority to refuse to approve a subsequent FDP. If a cutblock or road fails to meet the requirements of section 10(1)(d) and section 41 of the Act, a previously approved cutblock or road can only be "unapproved" for specific reasons. The road or block has to be inconsistent with:

- the enactment of a higher level plan;
- the establishment of a wildlife habitat area;
- the establishment of a community watershed;
- a watershed assessment;
- operations planned to address catastrophic damage or destruction of timber that occurred in the vicinity of the cutblock; or

- the timber harvesting or other operation for which the road was to provide access, as a result of the activity not proceeding.

If none of these apply, the effect of section 22 is that the district manager cannot refuse to approve a proposed FDP solely on the basis that previously approved cutblocks or roads may prevent the development plan from adequately managing and conserving forest resources.

Cutblock 209 was first approved in 1997. Subsequently, government agencies realized that the block was in caribou high habitat. However, a cutting permit had already been issued. The district manager could not refuse to approve the 1998 FDP just because it included cutblock 209. In other words, the district manager could not revisit the approval even though the original FDP approval in 1997 did not take into account that cutblock 209 was located in caribou high habitat.

Finding #5:

The district manager could not revisit the 1997 FDP approval, which included cutblock 209, because a cutting permit had subsequently been issued. Even though information in 1998 indicated that the cutblock was in caribou high habitat, section 22 of the *Operational Planning Regulation* prevented the district manager from refusing to approve the 1998 FDP on that basis.

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3. Can the district manager consider new information after making a decision?

On October 22, 1998, the district manager e-mailed his decision to approve the amendment proposing the southern route, with reasons, to MELP district staff. Within days, the district manager received several responses from MELP regional staff objecting to the decision. MELP regional staff provided additional information about caribou and snowmobile use. MELP regional staff stated that the slash debris barriers proposed by the licensee to control snowmobile access on the southern route would not effectively deter snowmobiles, as the surrounding forest was sparse enough to allow a snowmobiler to navigate around any road barrier. Also, past experience had shown that snowmobile restrictions were difficult to enforce. MELP staff maintained that caribou would disperse and abandon areas due to the sound of snow machines.

However, the district manager believed that, having already decided, he could not consider the new information. He maintained that belief even though he did not formally notify the licensee until November 20, 1998 that the 1998 FDP, which included the southern route contained in the proposed amendment to the 1997 FDP, was approved.

The district manager did consult the MOF recreation specialist. The recreation specialist believed that the likelihood of snowmobilers circumventing the slash debris was very low. In any event, he doubted that snowmobilers would use the area to any degree, as it does not contain attractive snowmobile terrain. However, the MOF recreation specialist was not consulted about the amendment until after the district manager made his decision to approve the road location on October 22, 1998. In effect he considered his recreation officer's input regarding snowmobile use, but not MELP's regional input, and did not do so until after his October 22 decision.

The Board believes that the district manager could have re-considered his decision, particularly before the licensee was formally notified of the approval. If new and relevant information indicated that the plan had been approved based on faulty or incomplete information, the district manager should have revisited that approval.

Finding #6:

After the district manager made his decision, he received additional and pertinent information. Since the district manager had not yet formally notified the licensee of that decision, he should have re-considered his decision and taken into account the new information.

Commentary

Under section 43 of the Act, the public had no opportunity to comment once the district manager determined that the amendment was minor. Government agencies did have an opportunity to comment through an inter-agency referral process, but there was a difference of opinion between MOF and MELP.

The three Code ministries in the Prince George region – the Ministry of Forests, the Ministry of Environment, Lands and Parks and the Ministry of Energy and Mines – have an agreement that guides the implementation of the Code. The May 1996 *Regional Implementation Plan for the Joint Administration of the Forest Practices Code* (PGRIP) defines roles and responsibilities of each ministry. This agreement has similar components of the 1995 *Provincial Memorandum of Understanding Regarding Joint Administration of the Forest Practices Code* in place since 1995. The PGRIP agreement discusses guiding principles for operational planning:

> Decision-makers will be accountable to the ministries which contributed to their processes. Where a ministry recommendation will not be followed, the statutory decision-maker will notify the ministry staff who have been involved, giving reasons why their recommendations are not being followed and providing information on how their concerns are considered. Wherever feasible this will be done prior to the decision, thereby providing an opportunity for dispute resolution.

The agreement includes procedures for resolving disputes:

> The dispute resolution process is intended for exceptional circumstances. Managers will consider whether every reasonable effort has been made prior to invoking the procedure. While we acknowledge the importance of professional debate in ensuring that the best decisions are made, we will accept the professional judgements and information provided by each ministry within its area of expertise ... Where there are conflicts among ministries at an operational planning level, and joint approval is not required, the decision maker may present the issue to the regional level to obtain additional perspectives and

> information prior to a decision being made. Such perspectives or information received does not relieve the decision-maker of responsibility to make the decision. Decision-makers will be accountable for seeking and considering all relevant input and demonstrating how it has been used in their decisions.

There was a marked difference of opinion regarding the impact of access on caribou. Despite this disagreement, neither ministry used the available dispute resolution process. The district manager did not notify MELP prior to his decision that MELP's recommendations were not going to be followed. In his correspondence to the Board, the district manager expressed the view that the conflict resolution procedures could not be used for this decision.

The Board disagrees in part. It is true that statutory decision-makers must not allow government policies to set such tight constraints on the decision-maker that independent decision-making, intended by the statute, is not carried out. The district manager could not be bound by the outcome of the dispute resolution process. However, the dispute resolution process could have provided important additional information to the district manager. Both ministries should have recognized that the disagreement about the new road location was a major one involving significant resource values and public interest. They should have implemented their dispute resolution procedure.

Lastly, when a licensee has an approved silviculture prescription and cutting permit, the licensee is legally entitled to log the cutblock. However, in this case, the original approval of the 1997 FDP was given on the basis of incorrect information – specifically, those who prepared the plan and those who reviewed it mistakenly believed that the proposed cutblock was located outside the caribou high zone. If the district manager had been aware that the proposed block was in the caribou high zone, he would likely not have approved it. However, even where no cutting permit has been issued, and no silviculture prescription has been approved, section 21 of the *Operational Planning Regulation* limits the district manager's ability to revisit cutblocks approved in FDPs.

Conclusions

1. Did the approval of an amendment to the 1997 approved FDP meet the requirements for minor amendments under the Code?

There are four conditions for approval of amendments under section 43 of the Code Act.

The district manager complied with the requirements of section 43(1)(a), which requires that the amendment meet the requirements of the Act, regulations and standards. He decided that the 1997 FDP amendment met the requirements of the Act and regulations. The Board agrees that the amendment met the content and information requirements of the Code as it applied to caribou.

The district manager did not comply with section 43(1)(b) of the Act. The district manager approved the 1997 FDP amendment despite evidence that: the proposed road location transected high-value caribou habitat; construction of the proposed road would contravene the caribou management strategies in the Prince George draft LRMP; and MELP staff advised that

access created by the road would create a high risk of extirpation of the caribou herd. The Board considers that the district manager's decision to approve the southern route was inconsistent with sound forest practices. The decision was not based on an adequate assessment of available information and could not, in the Board's view, adequately manage and conserve the forest resources. Additionally, the district manager did not properly exercise his discretion in making his decision. In focusing on a comparison of two routes, the district manager applied an incorrect test. He should initially have made his decision only on whether the amendment would adequately manage and conserve the forest resources. Then, once satisfied that both routes adequately managed and conserved, he could have compared the two. The amendment did not comply with the 1997 FDP's stated objective of complying with caribou guidelines.

The district manager also did not comply with section 43(1)(c) of the Act. The amendment materially changed the objectives and results of the plan by moving the road location to a new route in a different valley, affecting different resources.

2. Can the district manager revisit the approval of a cutblock approved in a previous development plan?

The district manager could not revisit the 1997 FDP approval as it related to cutblock 209 because a cutting permit had already been issued for that cutblock. Even though subsequent information indicated the block was in caribou high habitat, section 22 of the *Operational Planning Regulation* prevented the district manager from refusing to subsequently approve cutblock 209 in the 1998 FDP.

3. Can the district manager consider new information after making his decision?

After the district manager made his decision, he received additional and pertinent information with respect to that decision. Since the district manager had not yet formally notified the licensee of that decision, he should have reconsidered, taking the new information into account.

Recommendations

The Board makes the following recommendations in accordance with section 185 of the *Forest Practices Code of British Columbia Act* (the Act).

The Board recommends that the Prince George Land and Resource Management Plan resource management zones and objectives be formally established under the Code. That will provide greater certainty with respect to other forest resources, including caribou management requirements.

In the Board's view, there is a need for authority to revisit cutblock and road approvals if key information relevant to the approval was missed. The Board recognizes, however, that this cannot be open-ended. The circumstances in which approval can be revoked would need to be carefully defined so that licensees have certainty. Compensation in some form may be required in some circumstances.

For these reasons, the Board recommends that the Forest Practices Code be amended to give district managers authority in specific, defined circumstances to revoke a category A approval, a silviculture prescription approval and/or a cutting or road permit. The circumstances where approval could be revoked should include substantial errors in key facts or misrepresentations of key facts, as well as the circumstances already defined in section 21 of the *Operational Planning Regulation.* District managers should only have this authority in cases where they are satisfied, at the time of the revocation, that the cutblock or road will not adequately manage and conserve forest resources as previously approved.

The Board recommends that the Ministry of Forests and the Ministry of Water, Land and Air Protection (formerly the Ministry of Environment, Lands and Parks) affirm that conflict resolution procedures contained in the 1995 *Provincial Memorandum of Understanding Regarding Joint Administration of the Forest Practices Code* do apply to disagreements about decisions under the Code. The ministries should direct statutory decision-makers to use conflict resolution procedures when agencies disagree on significant issues, even in regard to decisions under the Code. The ministries should stress that statutory decision-makers must give notice to other ministries of adverse decisions prior to making the decision. This will allow for conflict resolution procedures that will help to ensure that all necessary information is available to the statutory decision-makers.

In accordance with section 186 of the Act, the Board asks that:

The Ministry of Forests advise the Board by January 1, 2002, about how it has addressed Recommendation 1.

The Prince George Forest District manager advise the Board by January 1, 2002, of what steps have been taken to establish the resource management zones and objectives of the Prince George LRMP.

The Ministry of Forests and Ministry of Water, Land and Air Protection advise the Board by April 1, 2002, of any proposed changes to section 22 of the *Operational Planning Regulation.*

ALTERNATE ROAD LOCATIONS